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No. 87-2061

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

DOROTHY COLLINS, ET. AL.,
Petitioners,

v.

PATRICIA K. BARRY,
DIRECTOR OF THE OHIO
DEPARTMENT OF HUMAN SERVICES,
Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED BY PETITIONERS

DOES A LAWFULLY ISSUED FINAL PERMANENT INJUNCTION REMAIN ENFORCEABLE IN COMPENSATORY CIVIL CONTEMPT PROCEEDINGS UNTIL SUCH TIME AS IT IS PROSPECTIVELY VACATED IN JUDICIAL PROCEEDINGS, NOTWITHSTANDING A POST-JUDGMENT CHANGE IN A STATUTE UPON WHICH THE INJUNCTION WAS BASED?

It is Respondent's position that a more accurate statement of the issue presented is:

WHETHER AN INJUNCTION WHOSE BASIS IS FEDERAL STATUTORY LAW IS ENFORCEABLE AFTER THAT STATUTE HAS BEEN CHANGED.

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STATEMENT OF THE CASE

Respondent accepts Petitioners' statement of the case.

SUMMARY OF ARGUMENT

A review on writ of certiorari is not a matter of right, but of judicial discretion and will be granted only when there are special and important reasons therefore. Sup. Ct. R. 17. This case presents no such reason for granting review.

In *Bowen v. Gilliard*, 107 S. Ct. 3008 (1987), decided this term, this Court voided a 1971 injunction effective with the enactment of the Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 494 §2640(a) (1984) ("DEFRA"). The Sixth Circuit below followed the *Gilliard* decision in this virtually identical case. Petitioner presents no reason to overturn *Gilliard.*

"Judicial deference" to legislative enactments is a long standing doctrine observed by this Court. An injunction based on statute must yield when that statute is modified.

The decision below is fair to Petitioners in that with the enactment of DEFRA, Petitioners were no longer entitled to the statutory benefits they seek. They are not entitled to compensation when they suffered no loss. Civil contempt, whose primary purpose is to compensate for loss suffered as a result of a violation of a court order, will not lie where, as here, no harm was incurred and the injunction is no longer enforceable. This long established principle need not be re-reviewed by this Court.

ARGUMENT

I. THE ISSUE PRESENTED TO THIS COURT WAS DECIDED IN BOWEN V. GILLIARD, 107 S. CT. 3008 (1987)

Buried at page 35 of Petitioner's 36 page brief is a passing reference to *Bowen v. Gilliard,* 107 S. Ct. 3008 (1987) (hereinafter "Gilliard"). Since *Gilliard* is dispositive of this case, Respondent will commence its brief discussing *Gilliard. Gilliard* makes further review of this issue before this Court unnecessary.

The present case is remarkably similar to *Gilliard.*[1] In each case, an injunction was issued in 1971, enjoining the enforcement of state rules ... t required inclusion of benefits and beneficiaries in a family filing unit for AFDC. *See Gilliard v. Kirk,* 331 F. Supp. 587 (W.D. N.C. 1971). In each case, the basis for the injunction was that the state regulation conflicted with federal law. In each case, without first seeking to modify the injunction, the states, acting in compliance[2] with DEFRA, effected rules reinstituting a standard filing unit. Further relief was subsequently sought by plaintiffs in each case and granted both retroactively to the date of the enactment of the regulations as well as prospectively.

In *Bowen V. Gilliard, supra,* this Court determined that ". . . the DEFRA amendment is constitutionally valid [and] requires reversal of both the District Courts' award of prospective relief and its award of retroactive relief." *Bowen*

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[1] The Gilliard case arose in the context of child support as opposed to OASDI benefits, a distinction not material to the issue before this Court.

[2] *Gilliard, supra,* and the Sixth Circuit below *(Collins v. Barry,* 841 F.2d 1297 (6th Cir. 1988); *Bradley v. Austin,* 841 F.2d 1288 (6th Cir. 1988) confirm that the states' regulations were consistent with statutory changes in DEFRA. Petitioner does not challenge in this action the correctness of those rulings nor the fact that the states correctly interpreted DEFRA.

v. Gilliard, 107 S. Ct. at 3015, N. 12. The Sixth Circuit cited and followed that ruling. *See Collins v. Barry*, 841 F.2d at 1300. This Court need not redecide an issue decided just several months ago.

The essence of the Courts' decisions is to give effect to valid federal statutes on the date of the enactment. Petitioner asks this Court to ignore the fact that a constitutionally sound statute exists. Certainly, this is improper.

Giving effect to legislative enactments, known as the doctrine of judicial deference (*see e.g. Class v. Norton*, 507 F.2d 1058 (2nd Cir. 1974)),[3] is not a new concept. The leading case in this area is *Pennsylvania v. The Wheeling and Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1856). In *Wheeling*, an injunction was issued requiring that a bridge be either elevated or abated since it represented an obstruction to free travel on the Ohio River.[4] Congress subsequently enacted legislation declaring the bridge to be a lawful structure, thus undercutting the basis for the injunction.[5] In

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[3] In *Class*, the Second Circuit Court of Appeals reversed the trial court's decision to deny relief under Fed. R. Civ. P. 60(b). Defendants sought to terminate an injunction due to the enactment of a regulation by the Department of Health, Education and Welfare. Via the injunction, Defendants were ordered to comply with existing regulations requiring processing of AFDC applications within 30 days. The regulations were amended to allow 45 days for processing. The Court of Appeals determined that the principle of judicial deference was decisive and that the injunction must be dissolved. *See also, McGrath v. Potash*, 199 F.2d at 167-168 (D.C. Cir. 1952); *International Ry. Co. v. Davidson*, 65 F. Supp. 58, 59 (W.D. N.Y. 1945).

[4] Underlying the injunction was the fact that a Virginia law allowing the bridge to be built was in conflict with acts of Congress and that under supremacy clause, the Virginia legislation must fall.

[5] The main bridge was blown down in a gale wind. While the company endeavored to repair it, this action was filed in District Court. An injunction was issued to prevent the repairs but was ignored. Subsequently, motions for contempt and to dissolve the injunction were filed.

determining whether the injunction or the subsequent legislation should take precedence, the Court stated:

> If, in the meantime, since the decree, this right has been modified by the competent authority, so that the bridge is no longer an unlawful obstruction, it is quite plain the decree of the court cannot be enforced. There is no longer any interference with the enjoyment of the public right inconsistent with law, no more than there would be where the plaintiff himself had consented to it, after the rendition of the decree. Suppose the decree had been executed, and after that, the passage of law in question, can it be doubted that the defendants would have had a right to reconstruct it? And is it not equally clear that the right to maintain it, if not abated, existed from the moment of the enactment? (*Wheeling, Supra*, 59 U.S. at 431-432.)

The doctrine of judicial deference has been continually reaffirmed by the Courts. *See, Systems Federation No. 91 v. Wright, 364 U.S. 642 (1961); Hodges v. Snyder*, 261 U.S. 600 (1923); *Gray v. Chicago, Iowa and Nebraska Ry. Co.*, 10 Wall. 454, 19 L.Ed. 382 (1870).

The present case is analogous to *Wheeling*. In each case, an injunction was issued based on a conflict between federal and state law. Likewise, amendments to federal law alleviated the conflict undercutting the basis for the injunction. Acts found unlawful under prior federal law (the basis for the injunction) were made lawful by subsequent legislation. In *Wheeling*, this Court determined that with the enactment of the legislation, the injunction could no longer be enforced. The present case was decided accordingly.

Petitioner seeks to distinguish *Gilliard* because *Gilliard* was not raised in the contempt framework. Petitioner's brief at 35. However, as the Court of Appeals below stated:

> In this case, plaintiff Collins and her class were not damaged by the defendant's actions in violation

> of the injunction. On October 1, 1984, as required by DEFRA, the Director amended Ohio law to conform with the requirements of 42 U.S.C. §602(a)(38). As of that date, plaintiff Collins and her class were no longer entitled to benefits as determined by the prior law. Therefore, they were not harmed as a result of the Director's action, since, under the law, they were receiving all the benefits to which they were entitled. *As civil contempt seeks to remedy a deprivation or a loss, and not to create additional rights,* the district court erred in finding defendant Barry in contempt and awarding a restoration of reduced or terminated benefits as a remedy. *See Gilliard,* 107 S. Ct. at 3015, n. 12 ("ruling that the DEFRA amendment is constitutionally valid requires reversal of both the district court's award of prospective relief and its award of retroactive relief.").

The fact that this case was brought as a contempt action is of no consequence and not a basis for distinguishing *Gilliard.* Contempt was merely the vehicle for placing the issue before the Court and does not affect the statutory rights of the parties.

This Court in *Gilliard* and *Pennsylvania v. Wheeling and Belmont Bridge Co., supra,* has determined that an injunction is modified by a statute effective the date of enactment of the statute. Petitioner presents no new issue for this Court to decide.

II. THE DECISION BELOW IS FAIR AND IN ACCORDANCE WITH THE LAW

Petitioners seek review of this matter to obtain welfare funds from the date of enactment of DEFRA until modification of the injunction. The decision of the lower court was fair to Petitioners in that Petitioners were not harmed by Respondent's actions.

The original injunction, attached hereto, created no additional rights to welfare benefits for Petitioners. The injunction simply enjoined Respondent from applying a state regulation that was inconsistent with federal law. The source of Petitioner's rights to benefits was not the injunction but federal statute.

When DEFRA was enacted, Petitioners were no longer entitled to those benefits under statute. Petitioners were not harmed by Respondent's failure to continue to comply with the injunction because the actions of Respondent were no longer in conflict with federal law. The source of Petitioner's rights to those benefits had changed. There was no reason for the Court to compensate Petitioners when no loss was incurred.

The decision below is also accurate and consistent with prior decisions by the courts, in addition to *Gilliard* and *Pennsylvania v. The Wheeling and Belmont Bridge Co., supra.*

It is well settled that the invalidity of a court order generally is not a defense in a criminal contempt proceeding alleging disobedience of the order. *Pennsylvania v. Local Union 542,* 552 F.2d 498, 505-506 (3rd Cir. 1977); *Fernos-Lopez v. United States District Ct.,* 599 F.2d 1087, 1091 (1st Cir. 1979); *United States v. Seale,* 461 F.2d 345, 361-362 (7th Cir. 1972). Contrary to the general rule regarding criminal contempt cases, a finding of civil contempt is invalidated if the underlying order is invalidated. *Squillacote v. Local 248, Meat and Allied Food Workers,* 534 F.2d 735 (7th Cir. 1976). *See also, United States v. United Mine Workers,* 330 U.S. 258, 295 (1947). Whether the adjudication of contempt survives the avoidance of the underlying order depends on the nature of the contempt decree. If the contempt is criminal, it stands; if it is civil, it falls. *Ager v. Jane C. Stormont Hospital and Training School for Nurses,* 622 F.2d 496, 499 (10th Cir. 1980).

In addressing this issue, the Fifth Circuit Court of Appeals stated:

> It is a well established principle that an order of civil contempt cannot stand if the underlying order on which it is based is invalid. In contrast, the validity of a criminal contempt adjudication resulting from the violation of a court order does not turn on the meritoriousness of that order.
>
> [I]n a criminal contempt the validity of the order allegedly disobeyed is not open to question in the slightest degree. Disobedience constitutes a contempt even though the order is set aside on appeal or otherwise becomes ineffective. In contrast, civil contempt falls with the order if it turns out to have been erroneously wrongfully issued. *United States v. United Mine Workers,* 1947, 330 U.S. 258, 294, 67 S. Ct. 677, 91 L.Ed. 884; *Worden v. Searls,* 1887, 121 U.S. 14, 7 S. Ct. 814, 30 L.Ed. 853; *Gompers v. Buck's Stove & Range Co.,* 1911, 221 U.S. 418, 451, 31 S. Ct. 492, 55 L.Ed. 797.

ITT Community Development Corp. v. Barton, 569 F.2d 1351 (5th Cir. 1978). A party held only in civil contempt by way of compensation to his adversary will be absolved of liability if the court order was invalid or erroneous. The adversary should realize no gain from orders to which he was not entitled. *Norman Bridge Drug Co. v. Banner,* 529 F.2d 822, 828 (5th Cir. 1976).

The purposes of compensatory civil contempt are not furthered when a party is rewarded for something he is not otherwise entitled to as opposed to compensated for actual loss. Whether an injunction is void *ab initio* or rendered unenforceable by a change in law, the result is the same. With the enactment of DEFRA, the statutory basis upon which the injunction was issued no longer existed and was therefore unenforceable.

The lower court correctly determined that Petitioners were not damaged by the violation of the injunction. The cases relied upon support the finding of the Court that civil contempt does not create additional rights for Petitioners. This case

is consistent with existing case law and offers no new issues for this Court to decide.

CONCLUSION

The issue presented to this Court was addressed this term in *Gilliard, supra,* and offers no important question of federal law nor is the decision in any way in conflict with applicable decisions of this Court. This Court should decline to accept this Petition on Writ of Certiorari and allow the decision of the Sixth Circuit Court of Appeals to stand.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three (3) true and accurate copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari were sent via regular U.S. Mail this 12th day of July, 1988 to Robert Bonthius, 1223 West 6th Street, Cleveland, Ohio 44113.

JOEL S. TAYLOR
Chief Counsel
Ohio Attorney General

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DOROTHY COLLINS, on behalf of her minor children, JAMES COLLINS, DOROTHY COLLINS and WARREN COLLINS,	)	
Plaintiffs	)	
v.	)	
DENVER L. WHITE, Director of the Department of Public Welfare, State of Ohio	)	CASE NO. C 69-830
and	)	
STEVEN MINTER, Director of the Cuyahoga County Welfare Department,	)	
Defendants	)	

Before: Celebrezze, Circuit Judge; Battisti, Chief Judge, District Court; and Lambros, District Judge

This is an action to enjoin the enforcement of Section 452.1 of the Ohio Public Service manual, as currently interpreted, providing standards for measuring the eligibility of families for Aid to Families with Dependant Children (AFDC) funds.[1]

The plaintiff, Mrs. Collins, receives $178.00 monthly in Social Security Old-Age, Survivors, and Disability Insurance (OASDI) benefits for herself individually and as trustee for James and Dorothy, the two children she has by her late

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[1] Section 452.1, in relevant part, states that in determining eligibility, ". . . all available income for each member of the family unit" shall be deducted, and that "When income is in excess of the total allowance, the family is ineligible."

husband.[2] Additionally, however, she has a third child, Warren, who is not entitled to these benefits and who is with no other means of support. Her application for aid for Warren from the Cuyahoga County Welfare Department was denied, and this decision was upheld by the State Department of Public Welfare. Both decisions were based on the view that the four people—Mrs. Collins, James, Dorothy, and Warren—constitute a single family unit, and that consequently the $178.00 must be considered as being available to all four members. The effect of this is to deny welfare payments for the support of Warren and to force Mrs. Collins to provide this support from funds which she says are intended for the exclusive use of James and Dorothy, thus breaching her fiduciary duty as their guardian.

After her appeal to the State Public Welfare Department was denied, Mrs. Collins came to this Court for a declaratory judgment that the State procedure under Section 452.1 violates the United States Constitution. Jurisdiction was noted under 28 U.S.C. §§2201 and 1343(3), and a three-judge court ordered convened under 28 U.S.C. §2281, with hearing and oral argument waived by agreement between the parties. The class plaintiffs seek to represent is a proper one under F.R.C.P. Rule 23, one consisting of families in which there are both needy children and children receiving OASDI benefits.

Plaintiffs have raised two questions: (1) an alleged deprivation of the Fourteenth-Amendment right to equal protection of the laws: (2) the incompatibility of the State procedure with Federal Social Security statutes and regulations. All essential facts have been agreed between the parties by stipulation; thus it is only to these two issues that this Court must address itself.

There may be at present no vested constitutional right to receive public assistance; yet, at the very least, there is

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[2] Of this $178.00, apparently $60.00 is paid to Mrs. Collins for her own benefit, the other $118.00 for the use of James and Dorothy.

implicit in every program of public assistance a vested right under the Constitution to equality and fairness of operation. See *Smith v. King,* 277 F.Supp. 31, at 40 (M.D. Ala., 1967, reaff'd *sub nom. King v. Smith,* 392 U.S. 309, 1968); *Rothstein v. Wyman,* 303 F.Supp. 339, at 346, (S.D. N.Y. 1969). If it is an impermissible discrimination to draw a distinction where no relevant difference exists, it must be discriminatory as well to refuse to draw a distincition where the circumstances manifestly justify one. The defendants argue that the plaintiffs have received treatment no different from that accorded to "every other applicant family requesting ADC eligibility and assistance" and that the source of income does not affect the computation of family income and need for AFDC purposes. This Court need not reach the question of whether this constitutes a denial of equal protection, however, in view of the conflict between the State regulation and applicable Federal law.

The heart of the defendants' argument is their contention that Mrs. Collins and her three children constitute a single family unit, so that money made available to one may be considered as available to all. Nonetheless, it is clear that in an important sense the three children—although born of the same mother and although members of the same household—must constitute something other than a single family unit. James and Dorothy have inherited certain rights from their father, rights to which they—and not Warren—are entitled. One of these is the right to receive benefits based upon their father's payments to the Social Security System. By law these benefits belong to them individually, not to the family as a whole; and to spend the money for the support of anyone other than James and Dorothy is punishable as conversion under 42 U.S.C. §408(c).

The situation clearly is analogous to that presented in *Lewis v. Martin,* 397 U.S. 552 (1970), in which the United States Supreme Court held that the mere presence of a "man assuming the role of a spouse" is not a valid ground for assuming the availability in fact of his income for the support of children in that household. Since, the Court reasoned, a man is under no legal obligation to support children not

his own, his income may not be considered in determining their eligibility for AFDC benefits absent a showing of actual contributions by him. Similarly, here James and Dorothy have no duty to support their half-brother Warren; thus, any money they receive from OASDI or any other source is by law theirs individually and not to be considered as available income for the family. This is clear from the wording of 42 U.S.C. §402(d), which states that the children of a person covered by OASDI are entitled to receive such benefits in their own right. As representative payee, their mother is in a fiduciary position, and must devote this money solely to their use and benefit (20 C.F.R. §404.1603) or face prosecution for conversion under 42 U.S.C. §408(e).

In this regard, we note as well State Letter No. 1088, dated September 25, 1970, from Commissioner of Social and Rehabilitative Service John L. Costa of the Department of Health, Education, and Welfare. Noting that this has been a "recurring issue," Commissioner Costa states that a child's OASDI benefits "are appropriately used only for the current needs of the child." He continues:

> "In view of the statutory requirement that a child's OASDI benefits be for his 'use and benefit' alone, the representative payee may not be required to use such benefits for other members of the child's family. Thus, if a child's monthly OASDI benefit exceeds his AFDC payment, the payee must have the option of removing the child together with his income from the AFDC family budget unit."

A State Letter from the Commissioner does not have the authority of a binding regulation; it does indicate, however, official Social Security policy and, as such, must be considered as one of the "official issuances to the States" which help determine ". . . whether State plans (including plan amendments and administrative practices under the plans) originally meet, or continue to meet, the requirements for approval. . . ." 45 C.F.R. §201.2. Its weight, therefore, while not decisive, does merit some consideration as to whether, in the view of the agency administering Social Security

programs, there exists a conflict between the Federal and State policies.

In the instant case such conflict hardly could be more obvious: the State of Ohio assumes as available family income, money which according to the Social Security statutes, regulations, and official policy letters, manifestly may not be used for anyone other than the specifically-named beneficiaries. When such a conflict exists between State law or procedure and Federal statutes or regulations made under them, there is no question that the Federal provisions must prevail. Constitution, Article VI; Clause 2, *Free v. Bland,* 369 U.S. 663 (1962); *Glover v. Mitchell,* 319 Mass. 1, 64 NE 2d 648 (1946).

Therefore, this Court finds that on its face Section 452.1 of the Ohio Public Service Manual conflicts with the clear and expressed meaning and intent of the Social Security Act and relevant regulations, and that this in turn constitutes a violation of Article VI, Clause 2 of the Constitution. The defendants are enjoined permanently from enforcing Section 452.1 of the Ohio Public Assistance Manual as it now reads, so as to include as "available family income" any income which under the terms of the Social Security laws and regulations is not available to the family generally but is restricted to the use and benefit of a named beneficiary. The defendants shall remove the plaintiffs James and Dorothy Collins from their family public assistance budget, retroactive to March, 1969, and shall reduce the budget accordingly in determining the eligibility of the family for AFDC benefits. In addition, the defendants shall compute and restore to the plaintiffs James and Dorothy Collins past benefits for which they are entitled to compensation. The same shall be done for all others similarly situated; that is, wherever eligibility of one or more children for OASDI benefits has been used as the basis for the denial of AFDC funds for other children in the same household unit.

It is so ordered.

Anthony J. Celebrezze

Frank J. Battisti

Thomas D. Lambros